
SUBSTITUTE HOUSE BILL 3007

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody and Skinner; by request of Department of Social and Health Services)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to home and community care services; amending RCW
2 74.09.520, 74.39A.009, 74.39A.030, 74.39A.090, and 74.39A.095; creating
3 a new section; and repealing RCW 74.39.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes the significant
6 gains made to support seniors and people with disabilities in
7 maintaining their independence and dignity in the most integrated, and
8 least restrictive, setting through the development of a system of home
9 and community care services. The legislature further recognizes that
10 the availability of case management services has allowed seniors and
11 people with disabilities, who may have otherwise been
12 institutionalized, to function in their own home at far less cost to
13 the state and federal government.

14 The legislature recognizes the importance of case management as a
15 critical home and community care service and maintains its commitment
16 to this system of services; however, the legislature also affirms that
17 in the event of limited case management resources, case management
18 service expectations should match available resources.

1 The legislature also finds that limited case management resources
2 should be targeted to those with the greatest care needs and the least
3 ability to meet those needs.

4 **Sec. 2.** RCW 74.09.520 and 2003 c 279 s 1 are each amended to read
5 as follows:

6 (1) The term "medical assistance" may include the following care
7 and services: (a) Inpatient hospital services; (b) outpatient hospital
8 services; (c) other laboratory and x-ray services; (d) nursing facility
9 services; (e) physicians' services, which shall include prescribed
10 medication and instruction on birth control devices; (f) medical care,
11 or any other type of remedial care as may be established by the
12 secretary; (g) home health care services; (h) private duty nursing
13 services; (i) dental services; (j) physical and occupational therapy
14 and related services; (k) prescribed drugs, dentures, and prosthetic
15 devices; and eyeglasses prescribed by a physician skilled in diseases
16 of the eye or by an optometrist, whichever the individual may select;
17 (l) personal care services, as provided in this section; (m) hospice
18 services; (n) other diagnostic, screening, preventive, and
19 rehabilitative services; and (o) like services when furnished to a
20 child by a school district in a manner consistent with the requirements
21 of this chapter. For the purposes of this section, the department may
22 not cut off any prescription medications, oxygen supplies, respiratory
23 services, or other life-sustaining medical services or supplies.

24 "Medical assistance," notwithstanding any other provision of law,
25 shall not include routine foot care, or dental services delivered by
26 any health care provider, that are not mandated by Title XIX of the
27 social security act unless there is a specific appropriation for these
28 services.

29 (2) The department shall amend the state plan for medical
30 assistance under Title XIX of the federal social security act to
31 include personal care services, as defined in 42 C.F.R. 440.170(f), in
32 the categorically needy program.

33 (3) The department shall adopt, amend, or rescind such
34 administrative rules as are necessary to ensure that Title XIX personal
35 care services are provided to eligible persons in conformance with
36 federal regulations.

1 (a) These administrative rules shall include financial eligibility
2 indexed according to the requirements of the social security act
3 providing for medicaid eligibility.

4 (b) The rules shall require clients be assessed as having a medical
5 condition requiring assistance with personal care tasks. Plans of care
6 for clients requiring health-related consultation for assessment and
7 service planning may be reviewed by a nurse.

8 (c) The department shall determine by rule which clients have a
9 health-related assessment or service planning need requiring registered
10 nurse consultation or review. This definition may include clients that
11 meet indicators or protocols for review, consultation, or visit.

12 (4) The department shall design and implement a means to assess the
13 level of functional disability of persons eligible for personal care
14 services under this section. The personal care services benefit shall
15 be provided to the extent funding is available according to the
16 assessed level of functional disability. Any reductions in services
17 made necessary for funding reasons should be accomplished in a manner
18 that assures that priority for maintaining services is given to persons
19 with the greatest need as determined by the assessment of functional
20 disability.

21 (5) Effective July 1, 1989, the department shall offer hospice
22 services in accordance with available funds.

23 (6) For Title XIX personal care services administered by aging and
24 (~~adult~~) disability services administration of the department, the
25 department shall contract with area agencies on aging:

26 (a) To provide case management services to individuals receiving
27 Title XIX personal care services in their own home; and

28 (b) To reassess and reauthorize Title XIX personal care services or
29 other home and community services as defined in RCW 74.39A.009 in home
30 or in other settings for individuals consistent with the intent of this
31 section:

32 (i) Who have been initially authorized by the department to receive
33 Title XIX personal care services or other home and community services
34 as defined in RCW 74.39A.009; and

35 (ii) Who, at the time of reassessment and reauthorization, are
36 receiving such services in their own home.

37 (7) In the event that an area agency on aging is unwilling to enter
38 into or satisfactorily fulfill a contract (~~(to provide these services)~~)

1 or the department elects to contract with a managed care organization
2 for the purpose of reducing acute care costs, the department is
3 authorized to:

- 4 (a) Obtain the services through competitive bid; and
- 5 (b) Provide the services directly until a qualified contractor can
6 be found.

7 **Sec. 3.** RCW 74.39A.009 and 1997 c 392 s 103 are each amended to
8 read as follows:

9 ~~((Unless the context clearly requires otherwise,))~~ The definitions
10 in this section apply throughout this chapter unless the context
11 clearly requires otherwise.

12 (1) "Adult family home" means a home licensed under chapter 70.128
13 RCW.

14 (2) "Adult residential care" means services provided by a boarding
15 home that is licensed under chapter 18.20 RCW and that has a contract
16 with the department under RCW 74.39A.020.

17 (3) "Assisted living services" means services provided by a
18 boarding home that has a contract with the department under RCW
19 74.39A.010 and the resident is housed in a private apartment-like unit.

20 (4) "Boarding home" means a facility licensed under chapter 18.20
21 RCW.

22 (5) "Cost-effective care" means care provided in a setting of an
23 individual's choice that is ~~((necessary to promote the most))~~
24 appropriate ((level of physical, mental, and psychosocial well-being
25 consistent with client choice, in an environment that is appropriate to
26 the care and safety needs of the individual, and such care cannot be
27 provided at a lower cost in any other setting. But this in no way
28 precludes an individual from choosing a different residential setting
29 to achieve his or her desired quality of life)) to the health and
30 safety needs of the individual and that is consistent with efficiency,
31 economy, and quality of care.

32 (6) "Department" means the department of social and health
33 services.

34 (7) "Enhanced adult residential care" means services provided by a
35 boarding home that is licensed under chapter 18.20 RCW and that has a
36 contract with the department under RCW 74.39A.010.

1 (8) "Functionally disabled person" is synonymous with chronic
2 functionally disabled and means a person who because of a recognized
3 chronic physical or mental condition or disease, including chemical
4 dependency, is impaired to the extent of being dependent upon others
5 for direct care, support, supervision, or monitoring to perform
6 activities of daily living. "Activities of daily living", in this
7 context, means self-care abilities related to personal care such as
8 bathing, eating, using the toilet, dressing, and transfer.
9 Instrumental activities of daily living may also be used to assess a
10 person's functional abilities as they are related to the mental
11 capacity to perform activities in the home and the community such as
12 cooking, shopping, house cleaning, doing laundry, working, and managing
13 personal finances.

14 (9) "Home and community services" means (~~adult family homes, in-~~
15 ~~home services, and other services administered or provided by contract~~
16 ~~by the department directly or through contract with area agencies on~~
17 ~~aging or similar services provided by facilities and agencies licensed~~
18 ~~by the department~~) care and services provided in the home, in licensed
19 residential facilities such as adult family homes and boarding homes,
20 or in other community settings, and that are administered or provided
21 by the department directly or through contract with area agencies on
22 aging, residential facilities, or other community agencies or
23 organizations.

24 (10) "Long-term care" is synonymous with chronic care and means
25 care and supports delivered indefinitely, intermittently, or over a
26 sustained time to persons of any age disabled by chronic mental or
27 physical illness, disease, chemical dependency, or a medical condition
28 that is permanent, not reversible or curable, or is long-lasting and
29 severely limits their mental or physical capacity for self-care. (~~The~~
30 ~~use of this definition~~) "Long-term care" is a generic term that does
31 not describe any medicaid-funded or state-funded programs or services
32 and is not intended to expand the scope of services, care, or
33 assistance (~~by any individuals, groups, residential care settings, or~~
34 professions unless otherwise expressed by law) provided to any
35 individuals or groups or by any care providers or professions.

36 (11) "Nursing home" means a facility licensed under chapter 18.51
37 RCW.

38 (12) "Secretary" means the secretary of social and health services.

1 (13) "Tribally licensed boarding home" means a boarding home
2 licensed by a federally recognized Indian tribe which home provides
3 services similar to boarding homes licensed under chapter 18.20 RCW.

4 **Sec. 4.** RCW 74.39A.030 and 2002 c 3 s 10 are each amended to read
5 as follows:

6 (1) To the extent of available funding, the department shall expand
7 cost-effective options for home and community services for consumers
8 for whom the state participates in the cost of their care.

9 (2) In expanding home and community services, the department shall:

10 (a) Take full advantage of federal funding available under Title XVIII
11 and Title XIX of the federal social security act, including home
12 health, adult day care, waiver options, and state plan services; and

13 (b) be authorized to use funds available under its community options
14 program entry system waiver granted under section 1915(c) of the
15 federal social security act to expand the availability of in-home,
16 adult residential care, adult family homes, enhanced adult residential
17 care, ~~((and))~~ assisted living services, and other home and community
18 services. By June 30, 1997, the department shall undertake to reduce
19 the nursing home medicaid census by at least one thousand six hundred
20 by assisting individuals who would otherwise require nursing facility
21 services to obtain services of their choice, including assisted living
22 services, enhanced adult residential care, and other home and community
23 services. If a resident, or his or her legal representative, objects
24 to a discharge decision initiated by the department, the resident shall
25 not be discharged if the resident has been assessed and determined to
26 require nursing facility services. In contracting with nursing homes
27 and boarding homes for enhanced adult residential care placements, the
28 department shall not require, by contract or through other means,
29 structural modifications to existing building construction.

30 (3)(a) The department shall by rule establish payment rates for
31 home and community services that support the provision of cost-
32 effective care. In the event of any conflict between any such rule and
33 a collective bargaining agreement entered into under RCW 74.39A.270 and
34 74.39A.300, the collective bargaining agreement prevails.

35 (b) The department may authorize an enhanced adult residential care
36 rate for nursing homes that temporarily or permanently convert their
37 bed use for the purpose of providing enhanced adult residential care

1 under chapter 70.38 RCW, when the department determines that payment of
2 an enhanced rate is cost-effective and necessary to foster expansion of
3 contracted enhanced adult residential care services. As an incentive
4 for nursing homes to permanently convert a portion of its nursing home
5 bed capacity for the purpose of providing enhanced adult residential
6 care, the department may authorize a supplemental add-on to the
7 enhanced adult residential care rate.

8 (c) The department may authorize a supplemental assisted living
9 services rate for up to four years for facilities that convert from
10 nursing home use and do not retain rights to the converted nursing home
11 beds under chapter 70.38 RCW, if the department determines that payment
12 of a supplemental rate is cost-effective and necessary to foster
13 expansion of contracted assisted living services.

14 **Sec. 5.** RCW 74.39A.090 and 1999 c 175 s 2 are each amended to read
15 as follows:

16 (1) The legislature intends that any staff reassigned by the
17 department as a result of shifting of the reauthorization
18 responsibilities by contract outlined in this section shall be
19 dedicated for discharge planning and assisting with discharge planning
20 and information on existing discharge planning cases. Discharge
21 planning, as directed in this section, is intended for residents and
22 patients identified for discharge to long-term care pursuant to RCW
23 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge
24 planning is to protect residents and patients from the financial
25 incentives inherent in keeping residents or patients in a more
26 expensive higher level of care and shall focus on care options that are
27 in the best interest of the patient or resident.

28 (2) The department shall contract with area agencies on aging:

29 (a) To provide case management services to consumers receiving home
30 and community services in their own home; and

31 (b) To reassess and reauthorize home and community services in home
32 or in other settings for consumers consistent with the intent of this
33 section:

34 (i) Who have been initially authorized by the department to receive
35 home and community services; and

36 (ii) Who, at the time of reassessment and reauthorization, are
37 receiving home and community services in their own home.

1 (3) In the event that an area agency on aging is unwilling to enter
2 into or satisfactorily fulfill a contract (~~(to provide these services))~~
3 or the department elects to contract with a managed care organization
4 for the purpose of reducing acute care costs, the department is
5 authorized to:

6 (a) Obtain the services through competitive bid; and

7 (b) Provide the services directly until a qualified contractor can
8 be found.

9 (4) The department shall include, in its oversight and monitoring
10 of area agency on aging performance, assessment of case management
11 roles undertaken by area agencies on aging in this section. The scope
12 of oversight and monitoring (~~(must be expanded to))~~ includes, but is
13 not limited to, assessing the degree and quality of the case management
14 performed by area agency on aging staff for elderly and disabled
15 persons in the community.

16 (5) Area agencies on aging shall assess the quality of the in-home
17 care services provided to consumers who are receiving services under
18 the medicaid personal care, community options programs entry system or
19 chore services program through an individual provider or home care
20 agency. Quality indicators may include, but are not limited to, home
21 care consumers satisfaction surveys, how quickly home care consumers
22 are linked with home care workers, and whether the plan of care under
23 RCW 74.39A.095 has been honored by the agency or the individual
24 provider.

25 (6) The department shall develop model language for the plan of
26 care established in RCW 74.39A.095. The plan of care shall be in clear
27 language, and written at a reading level that will ensure the ability
28 of consumers to understand the rights and responsibilities expressed in
29 the plan of care.

30 **Sec. 6.** RCW 74.39A.095 and 2002 c 3 s 11 are each amended to read
31 as follows:

32 (1) In carrying out case management responsibilities established
33 under RCW 74.39A.090 for consumers who are receiving services (~~(under))~~
34 from an individual provider through the medicaid personal care program,
35 (~~(community options programs entry system))~~ a home or community-based
36 waiver program authorized under chapter 74.39 RCW or this chapter, or
37 the chore services program (~~(through an individual provider))~~, each

1 area agency on aging shall (~~provide oversight of~~) monitor the care
2 being provided to consumers (~~receiving services under this section to~~
3 ~~the extent of available funding~~). Case management responsibilities
4 (~~incorporate this oversight, and~~) include, but are not limited to:

5 (a) Verification that any individual provider who has not been
6 referred to a consumer by the authority established under chapter 3,
7 Laws of 2002 has met any training requirements established by the
8 department;

9 (b) Verification of a sample of worker time sheets;

10 (c) Monitoring the consumer's plan of care to ensure that it
11 adequately meets the needs of the consumer, through activities such as
12 home visits, telephone contacts, and responses to information received
13 by the area agency on aging indicating that a consumer may be
14 experiencing problems relating to his or her home care;

15 (d) Reassessment and reauthorization of services;

16 (e) Monitoring of individual provider performance. If, in the
17 course of its case management activities, the area agency on aging
18 identifies concerns regarding the care being provided by an individual
19 provider who was referred by the authority, the area agency on aging
20 must notify the authority regarding its concerns; and

21 (f) Conducting criminal background checks or verifying that
22 criminal background checks have been conducted for any individual
23 provider who has not been referred to a consumer by the authority.

24 (2) The area agency on aging case manager shall work with each
25 consumer to develop a plan of care under this section that identifies
26 and ensures coordination of health and long-term care services that
27 meet the consumer's needs. In developing the plan of care, (~~they~~)
28 the case manager shall utilize, and modify as needed, any comprehensive
29 community service plan developed by the department as provided in RCW
30 74.39A.040. The plan of care shall include, at a minimum:

31 (a) The name and telephone number of the consumer's area agency on
32 aging case manager, and a statement as to how the case manager can be
33 contacted about any concerns related to the consumer's well-being or
34 the adequacy of care provided;

35 (b) The name and telephone numbers of the consumer's primary health
36 care provider, and other health or long-term care providers with whom
37 the consumer has frequent contacts;

1 (c) A clear description of the roles and responsibilities of the
2 area agency on aging case manager and the consumer receiving services
3 under this section;

4 (d) The duties and tasks to be performed by the area agency on
5 aging case manager and the consumer receiving services under this
6 section;

7 (e) The type of in-home services authorized, and the number of
8 hours of services to be provided;

9 (f) The terms of compensation of the individual provider;

10 (g) A statement that the individual provider has the ability and
11 willingness to carry out his or her responsibilities relative to the
12 plan of care; and

13 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
14 statement indicating that a consumer receiving services under this
15 section has the right to waive any of the case management services
16 offered by the area agency on aging under this section, and a clear
17 indication of whether the consumer has, in fact, waived any of these
18 services.

19 (ii) The consumer's right to waive case management services does
20 not include the right to waive reassessment or reauthorization of
21 services, or verification that services are being provided in
22 accordance with the plan of care.

23 (3) Each area agency on aging shall retain a record of each waiver
24 of services included in a plan of care under this section.

25 (4) Each consumer has the right to direct and participate in the
26 development of their plan of care to the maximum practicable extent of
27 their abilities and desires, and to be provided with the time and
28 support necessary to facilitate that participation.

29 (5) A copy of the plan of care must be distributed to the
30 consumer's primary care provider, individual provider, and other
31 relevant providers with whom the consumer has frequent contact, as
32 authorized by the consumer.

33 (6) The consumer's plan of care shall be an attachment to the
34 contract between the department, or their designee, and the individual
35 provider.

36 (7) If the department or area agency on aging case manager finds
37 that an individual provider's inadequate performance or inability to
38 deliver quality care is jeopardizing the health, safety, or well-being

1 of a consumer receiving service under this section, the department or
2 the area agency on aging may take action to terminate the contract
3 between the department and the individual provider. If the department
4 or the area agency on aging has a reasonable, good faith belief that
5 the health, safety, or well-being of a consumer is in imminent
6 jeopardy, the department or area agency on aging may summarily suspend
7 the contract pending a fair hearing. The consumer may request a fair
8 hearing to contest the planned action of the case manager, as provided
9 in chapter 34.05 RCW. When the department or area agency on aging
10 terminates or summarily suspends a contract under this subsection, it
11 must provide oral and written notice of the action taken to the
12 authority. The department may by rule adopt guidelines for
13 implementing this subsection.

14 (8) The department or area agency on aging may reject a request by
15 a consumer receiving services under this section to have a family
16 member or other person serve as his or her individual provider if the
17 case manager has a reasonable, good faith belief that the family member
18 or other person will be unable to appropriately meet the care needs of
19 the consumer. The consumer may request a fair hearing to contest the
20 decision of the case manager, as provided in chapter 34.05 RCW. The
21 department may by rule adopt guidelines for implementing this
22 subsection.

23 (9) The department, or the area agency on aging as authorized by
24 the department, may in its discretion refuse to authorize services if
25 the department or area agency on aging determines that the consumer's
26 needs cannot safely be met. The consumer may request a fair hearing to
27 contest the decision of the case manager, as provided in chapter 34.05
28 RCW. The department may by rule adopt guidelines for implementing this
29 subsection (9). Neither the department nor the area agency on aging
30 shall be liable for exercising or failing to exercise discretion to
31 refuse services under this subsection.

32 NEW SECTION. Sec. 7. RCW 74.39.030 (Community options program
33 entry system--Waiver--Respite services) and 1989 c 427 s 11 are each
34 repealed.

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